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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

DONNA GARCIA, <p style="text-align: center;">Plaintiff,</p> vs. RESURGENT CAPITAL L.P., LVNV FUNDING, LLC, THE BRACHFELD LAW GROUP, P.C., <p style="text-align: center;">Defendants.</p>	CIV. NO. 11-1253 EMC PLAINTIFF DONNA GARCIA'S DECLARATION IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGEMENT Date: March 23, 2012 Time: 1:30 p.m. HON. EDWARD M. CHEN
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I, Donna Garcia, am the named plaintiff in this action.

1. I am a 63 year old woman and retired County of Santa Clara administrator.

2. It all began on or about March 30, 2006, when I received a collection letter from a company by the name of Ventus Capital, attempting to collect on an alleged Sears debt. **Exhibit 1.**

3. I never heard of Ventus Capital.

4. The letter said Ventus was attempting to collect a debt on behalf of LVNV Funding, LLC.

The letter stated in part:

Regarding	Reference Number	Creditor	Amount due
Sears	160434874	LVNV Funding, LLC	\$921.83

IMPORTANT NOTICE

The following accounts have been placed with this office for collection:

Date of Service	Regarding	Amount Owed
05/1/1983	Donna Garcia	\$921.83

5. Relying on these letters and statements Defendants' agents made to me on the phone, I believed Defendants were mistakenly attempting to collect a debt that was owed by her ex-husband from 1983.

6. Indeed, in one of the first collection phone calls Ventus Capital reinforced my belief the debt was incurred by my ex-husband- to acquire aluminum siding for our former home.

7. Since, Ventus was unable to provide any further information about the debt, I began disputing the account and debt, and requesting the debt collectors cease contacting her. When the debt collector cannot deliver proof, I dispute it, refuse to pay it, and request that they cease contacting me. However, the debt collectors ignore my wishes and continued to call me.

8. From 2006 to 2011 LVNV placed the debt with various collection agencies that attempted to collect from me. I requested proof of the debt, but was rejected. Numerous debt collection agencies ignored my requests that they verify this debt, and cease and desist contacting me. LVNV would then simply place the account with a different collection agency, forcing me to again request proof of the debt, and since no proof was ever provided, dispute the debt and request the collections cease. With each successive placement to a new collection agency I would send another letter disputing the debt, and demanding the collector's cease. My requests for more information were rejected, and the debt

1 collectors never sent me proof of the debt. In telephone conversations they told me, even if the debt
2 was from 1983, or my ex-husband's, I had to pay it, since I was responsible.

3 9. I disputed the debt and sent at least five (5) cease and desist letters; however the debt collectors
4 ignored those letters and continued to attempt to collect the debt.

5 10. I received or sent the following collection, dispute, or cease and desist letters, and sent the
6 following credit reporting disputes, and government agency complaint letters:

- 7 • March 30, 2006, letter from Ventus Capital. Exhibit 1.
- 8 • April 4, 2006, letter to Citicard. Exhibit 2.
- 9 • July 27, 2006, letter from Ventus Capital. Exhibit 3.
- 10 • August 11, 2006, letter to Ventus Capital. Exhibit 4.
- 11 • September 22, 2006, letter from Academy Collection Services. Exhibit 5.
- 12 • September 27, 2006, letter to Sears. Exhibit 6.
- 13 • October 3, 2006, letter to Academy Collection Services. Exhibit 7.
- 14 • October 6, 2006, letter from Academy Collection Services, Exhibit 8.
- 15 • December 5, 2006, letter from Brachfeld Law Group, P.C. Exhibit 9.
- 16 • December 10, 2006, letter to Brachfeld Law Group, P.C. Exhibit 10.
- 17 • March 3, 2007, letter to Brachfeld Law Group, P.C. Exhibit 11.
- 18 • March 10, 2009, letter to Compliance Department, Exhibit 12.
- 19 • March 12, 2009, letter to Transunion. Exhibit 13.
- 20 • February 2, 2011, letter to California Department of Consumer Affairs. Exhibit 14.
- 21 • February 11, 2011, letter to Brachfeld and Associates. Exhibit 15.

22
23 11. My December 10, 2011 letter to Brachfeld specifically states, "I am writing this letter in
24 response to the letter dated 12/05/06 that I received from you regarding the above listed **file**. At this
25 time I again want to repeat this is not my bill...Let me again repeat that this bill is not mine and I am
26 not going to pay it." (emphasis added). Again, the above listed **file** that I refused to pay was **File #**
27 **MLN 03755**. Yet, Brachfeld continued to attempt to collect from me on **File # MLN 03755**.

1 Similarly, my March 3, 2007 letter also referred to **File # MLN** and served as a cease and desist letter.

2 A copy of the certified receipt proving Brachfeld received it is also attached.

3 12. On or about March 23, 2009, I disputed owing any debt to LVNV Funding, LLC, and
4 Sears, by disputing such directly with Experian, Transunion and Equifax, credit reporting agencies.
5 On or about April 3, 2009, Transunion responded by indicating the debt to LVNV Funding, LLC, was
6 deleted, and the debt to Sears was updated to show a \$0 balance. At a later date Equifax and Experian
7 also showed no balances owing to Sears. Also, LVNV Funding and Resurgent were not reporting any
8 debt to the three major credit reporting agencies.
9

10 13. A summary review of some of my letters is below:

11 • **On April 4, 2006**, I wrote Citi Card, stating: "This is not my bill and I do not owe this
12 money. This bill is over 22 years old....During this 22 year period I have not received a bill from
13 Sears for this "charge....I want this bill straightened out immediately. I want this bill and notice of
14 collection erased from my credit rating immediately. I will do anything I can to help you resolve this
15 problems and I expect you to take care of this immediately." Plaintiff's first paragraph indicated she
16 was writing about the \$921.83 alleged debt.

17 • **On August 11, 2006**, I wrote Ventus Capital (collecting on behalf of LVNV), stating: "This
18 was regarding a bill with the reference number 16043874 for the amount of \$921.83 for a Sear's bill.
19 This is a bill that is not mine." ...From the information I received from the last phone call I believe that
20 this bill belongs to my ex-husband, Carl Love, AKA Carroll Love...Do not contact me again in writing
21 or by phone." The first paragraph indicated I was writing about the \$921.83 alleged debt LVNV was
22 attempting to collect for a Sear's bill.

23 • **On September 27, 2006**, I wrote Sears Credit Services, stating: "Let me tell you one more
24 time. THIS IS NOT MY BILL. If you go back and look at your documents you will find that this is
25 not my signature on the purchase and I certainly did not make payments on it...This bill has passed to
26 different collection agencies and the people seem to get ruder and more obnoxious with every change.
27 There also appears to be no communication between the different agencies. I want this to stop now."
28 My first paragraph indicated I was writing about the \$921.83 alleged debt Ventus Capital was
attempting to collect on behalf of LVNV.

1 14. On or about December 5, 2006, Defendant Brachfeld sent me a letter attempting to collect
2 a debt. The letters "Regarding:" section stated (Exhibit 9):

3 **RE: Sears LVNV Funding, LLC**
4 **File #MLN03755**

5 15. On December 10, 2006, I sent Defendant Brachfeld a cease and desist letter. The letter's
6 "Regarding" section stated (Exhibit 10):

7 **RE: Sears LVNV Funding, LLC**
8 **File #MLN03755**

9 16. However, in a telephone conversation on March 3, 2007, Defendant Brachfeld denied
10 receiving the December 20, 2006 letter (yet, I now understand John Birdt admits Brachfeld received
11 the letter). So, on March 7, 2007, I sent Defendant Brachfeld another cease and desist letter. This
12 letter's "Regarding" section also stated (Exhibit 11):

13 **RE: Sears LVNV Funding, LLC**
14 **File #MLN03755**

15
16 17. From November 2010 to February 2011 Defendants telephoned me more than 40 times in
17 an attempt to collect the disputed debt, including calling on multiple days I had hung up, despite my
18 multiple letters and disputes since 2006. I did not make a note of every single phone call during this
19 ordeal, but I did note more than two-dozen since December 2010. I understand records produced by
20 Defendants are consistent with my memory, and in particular the Live Vox records help refresh my
21 recollection that there were at least more than 40 telephone calls placed to me by Defendants from
22 November 2010 to February 2011.

23 19. In numerous calls I would answer, hear a pre-recorded message it was Brachfeld again
24 attempting to collect a debt, and I would hang up. In numerous calls Defendants left messages saying
25 they were attempting to collect a debt.

26 20. On numerous occasions Defendants called me multiple times in one day, and called me
27 after I already hung up on them.

VERIFICATION

Executed on March 2, 2012, 2011, at Lakeport, California.

DONNA GARCIA